



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0790/T1
MES&FFK:sac:fs

RMP

DOA:.....Ley, BB0294 – Transfer certification of business for capital gain deferral and exclusion from WEDC to DOR; consolidate the subtractions

FOR 2013-2015 BUDGET -- NOT READY FOR INTRODUCTION

NOTE

do not gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, capital gains on certain Wisconsin-sourced capital assets are exempted from taxation. For taxable years beginning after December 31, 2015, an individual; an individual partner or member of a partnership, limited liability company, or limited liability partnership; or an individual shareholder of a tax-option corporation (claimant) may subtract from federal adjusted gross income the lesser of the claimant's federal net capital gain as reported on the claimant's federal tax return if, in that year, the claimant had a qualifying gain, or the claimant's qualifying gain.

The capital gains exemption defines "qualifying gain" as the gain realized by the sale of any asset that is purchased after December 31, 2010, held for at least five consecutive years, is a Wisconsin capital asset at the time of purchase and for at least two of the next four years, and treated as a long-term gain under federal law. A "Wisconsin capital asset" is real or tangible personal property that is located in this state and used in a Wisconsin business, or stock or other ownership interest in a Wisconsin business. Currently, a business may apply to WEDC for annual

certification. WEDC may certify a business if it determines that, in the taxable year ending immediately before the date of the business's application, at least 50 percent of the business's payroll is paid in Wisconsin and at least 50 percent of the value of the business's real and tangible personal property is used by the business in this state.

This bill transfers the responsibility for registering a business from WEDC to DOR, subject to the business meeting the same conditions related to payroll and the value of the business's real and tangible personal property as is the case under current law. Also under the bill, excluded gain is not limited to net capital gain, and the bill clarifies that the exclusion is for gain on investments in a business and not for individual assets of the business.

Also under current law, there are two income tax deferrals for capital gains that are reinvested in qualified Wisconsin businesses.

Under one of the deferrals (long-term deferral), a claimant may elect to defer the payment of income taxes on up to \$10,000,000 of the gain realized from the sale of any capital asset held more than one year (original asset) that is treated as a long-term gain under the Internal Revenue Code, if the claimant completes a number of requirements. The requirements include: placing the gain from the original asset in a segregated account in a financial institution; investing all of the proceeds in a qualified new business venture (QNBV), as certified by WEDC, within 180 days after the sale of the original asset that generated the gain; and notifying DOR on a form prepared by DOR that the claimant is deferring the payment of income tax on the gain from the original asset because the proceeds have been reinvested. Under the bill, the long-term deferral may no longer be claimed for taxable years beginning after December 31, 2013.

Under the other deferral (Wisconsin assets deferral), a claimant may elect to defer the payment of income taxes on any amount of the gain realized from the sale of any capital asset held more than one year (original new asset) that is treated as a long-term gain under the Internal Revenue Code, if the claimant completes a number of requirements. The current requirements for the Wisconsin assets deferral are nearly the same as the requirements for the long-term deferral, although the proceeds must be invested in a "qualified Wisconsin business," as certified by WEDC, instead of a QNBV.

Under this bill, for taxable years beginning after December 31, 2013, the current requirement that the gain realized from the sale of the applicable long-term asset must be deposited into a segregated account in a financial institution does not apply. This bill transfers the responsibility for registering a business under the Wisconsin assets deferral from WEDC to DOR.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.05 (24) (b) (intro.) of the statutes is amended to read:

2 71.05 (24) (b) (intro.) For taxable years beginning after December 31, 2010, and
3 before January 1, 2014, a claimant may subtract from federal adjusted gross income
4 any amount, up to \$10,000,000, of a long-term capital gain if the claimant does all
5 of the following:

***NOTE: The init. app/eff. date instructions from DOR say that the amendment of s. 71.05 (24) should be "effective for taxable years beginning on or after January 1, 2014", which is inconsistent with the drafting instructions for the text. I implemented the drafting instructions in the text, which in effect creates an in-text sunset provision, and did not treat s. 71.05 (24) in the initial applicability provision. Is this OK?

6 **SECTION 2.** 71.05 (25) (title) of the statutes is amended to read:

7 71.05 (25) (title) CAPITAL GAINS EXCLUSION; ~~WISCONSIN-SOURCE ASSETS QUALIFIED~~
8 WISCONSIN BUSINESS.

9 **SECTION 3.** 71.05 (25) (a) 2. of the statutes is amended to read:

10 71.05 (25) (a) 2. "Qualifying gain" means the a long-term capital gain under
11 the Internal Revenue Code realized from the sale of any asset which is a Wisconsin
12 capital asset in the year it is purchased by the claimant and for at least 2 of the
13 subsequent 4 years; that is purchased an investment made after December 31, 2010;
14 that is, and held for at least 5 uninterrupted years; and that is treated as a long-term
15 gain under the Internal Revenue Code in a business that for the year of investment
16 and at least 2 of the 4 subsequent years was a qualified Wisconsin business; except
17 that a qualifying gain may not include any amount for which the claimant claimed
18 a subtraction under sub. (24) (b) or any gain described under sub. (26) (b) 1.

1 **SECTION 4.** 71.05 (25) (a) 3. of the statutes is renumbered 71.05 (25) (a) 1s. and
2 amended to read:

3 71.05 (25) (a) 1s. “Qualified Wisconsin business” means a business certified by
4 the Wisconsin Economic Development Corporation under s. 238.145 or registered
5 with the department under s. 73.03 (69).

6 **SECTION 5.** 71.05 (25) (a) 4. of the statutes is repealed.

7 **SECTION 6.** 71.05 (25) (b) (intro.) of the statutes is renumbered 71.05 (25) (b)
8 and amended to read:

9 71.05 (25) (b) For taxable years beginning after December 31, 2015, for a
10 ~~Wisconsin capital asset that is purchased~~ an investment in a qualified Wisconsin
11 business made after December 31, 2010, and held for at least 5 uninterrupted years,
12 a claimant may subtract from federal adjusted gross income the lesser of one of the
13 ~~following amounts~~ amount of the claimant’s qualifying gain in the year to which the
14 claim relates, to the extent that it is not subtracted under sub. (6) (b) 9. or 9m.:

15 **SECTION 7.** 71.05 (25) (b) 1. of the statutes is repealed.

16 **SECTION 8.** 71.05 (25) (b) 2. of the statutes is repealed.

17 **SECTION 9.** 71.05 (26) (title) of the statutes is amended to read:

18 71.05 (26) (title) ~~INCOME TAX DEFERRAL; LONG-TERM WISCONSIN CAPITAL ASSETS~~
19 QUALIFIED WISCONSIN BUSINESS.

20 **SECTION 10.** 71.05 (26) (a) 4. of the statutes is amended to read:

21 71.05 (26) (a) 4. “Qualified Wisconsin business” means a business certified by
22 the Wisconsin Economic Development Corporation under s. 238.146 or registered
23 with the department under s. 73.03 (69).

24 **SECTION 11.** 71.05 (26) (b) (intro.) of the statutes is amended to read:

1 71.05 (26) (b) (intro.) For taxable years beginning after December 31, 2010, and
2 before January 1, 2014, a claimant may subtract from federal adjusted gross income
3 any amount of a long-term capital gain if the claimant does all of the following:

4 **SECTION 12.** 71.05 (26) (bm) of the statutes is created to read:

5 71.05 (26) (bm) For taxable years beginning after December 31, 2013, a
6 claimant may subtract from federal adjusted gross income any amount of a
7 long-term capital gain if the claimant does all of the following:

8 1. Within 180 days after the sale of the asset that generated the gain, invests
9 all of the gain in a qualified Wisconsin business.

10 2. After making the investment as described under subd. 1., notifies the
11 department, on a form prepared by the department, that the claimant will not
12 declare the gain on the claimant's income tax return because the claimant has
13 reinvested the capital gain as described under subd. 1. The form shall be sent to the
14 department along with the claimant's income tax return for the year to which the
15 claim relates.

16 **SECTION 13.** 71.05 (26) (c) of the statutes is amended to read:

17 71.05 (26) (c) The basis of the investment described in par. (b) 2. shall be
18 calculated by subtracting the gain described in par. (b) 1. from the amount of the
19 investment described in par. (b) 2. The basis of the investment described in par. (bm)
20 1. shall be calculated by subtracting the gain described in par. (bm) 1. from the
21 amount of the investment described in par. (bm) 1.

22 **SECTION 14.** 71.05 (26) (d) of the statutes is amended to read:

23 71.05 (26) (d) If a claimant defers the payment of income taxes on a capital gain
24 under this subsection, the claimant may not use the gain ~~described under par. (b) 1.~~
25 to net capital gains and losses, as described under sub. (10) (c).

1 **SECTION 15.** 71.05 (26) (f) of the statutes is amended to read:

2 71.05 **(26)** (f) If a claimant claims the a subtraction for a capital gain under this
3 subsection par. (b) or (bm), the gain ~~described under par. (b) 1.~~ may not be used as
4 a qualifying gain under sub. (25).

5 **SECTION 16.** 73.03 (69) of the statutes is created to read:

6 73.03 **(69)** (a) To, effective on January 1, 2014, implement a program to register
7 businesses for purposes of s. 71.05 (25) and (26). A business shall register
8 electronically with the department each year for which the business desires
9 registration.

10 (b) A business may register under this subsection if, in the business's taxable
11 year ending immediately before the date of the businesses registration, all of the
12 following apply: *business has at least two full-time employees*
and the paid 2

13 1. The amount of payroll compensation ~~paid~~ by the business in this state is equal
14 to at least 50 percent of the amount of all payroll compensation paid by the business.

15 2. The value of real and tangible personal property owned or rented and used
16 by the business in this state is equal to at least 50 percent of the value of all real and
17 tangible personal property owned or rented and used by the business.

18 (c) The department may adopt rules for the administration of this subsection.

19 (d) For each year beginning after December 31, 2013, the department shall
20 compile a list of businesses registered under this subsection and shall make the list
21 available to the public at the department's Internet site.

22 **SECTION 17.** 238.145 (1) of the statutes is amended to read:

23 238.145 (1) The corporation shall implement a program to certify businesses
24 for purposes of s. 71.05 (25). A business shall submit an application to the

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1 corporation in each calendar year for which the business desires certification; except
2 that a business may not submit an application after December 31, 2013.

***NOTE: This prohibits the submission of an application to WEDC after December 31, 2013 but continues to require WEDC to implement a program to certify businesses for purposes of s. 71.05 (25). Is this consistent with your intent? If this is a permanent change, you may want to consider repealing s. 238.145 as of a specific delayed effective date. This note also applies to ss. 238.146 (1) and 238.20 (1) (intro.).

3 **SECTION 18.** 238.146 (1) of the statutes is amended to read:

4 238.146 (1) The corporation shall implement a program to certify businesses
5 for purposes of s. 71.05 (26). A business shall submit an application to the
6 corporation in each calendar year for which the business desires certification; except
7 that a business may not submit an application after December 31, 2013.

8 **SECTION 19.** 238.20 (1) (intro.) of the statutes is amended to read:

9 238.20 (1) (intro.) The corporation shall implement a program to certify
10 qualified new business ventures for purposes of s. 71.05 (24). A business desiring
11 certification shall submit an application to the corporation in each taxable year for
12 which the business desires certification; except that a business may not submit an
13 application after December 31, 2013. Subject to sub. (2), a business may be certified
14 under this subsection, and may maintain such certification, only if the business is
15 engaged in one of the following:

16 **SECTION 9337. Initial applicability; Revenue.**

17 (1) CAPITAL GAINS DEFERRALS, EXCLUSIONS. ^Q (a) The treatment of section 71.05
18 (25) (title), (a) 2., 3., and 4., and (b) (intro.), 1., and 2. of the statutes first applies,
19 retroactively, to taxable years beginning after December 31, 2010.

***NOTE: The instructions from DOR state that the treatment of s. 71.05 (25) should "take effect" on January 1, 2011; do you really want a retroactive initial applicability for this provision? How would it affect people who have claimed the deferral for a "Wisconsin capital asset", as defined in par. (a) 4., which is repealed? Would they have to amend their returns based on the new definition of "qualified Wisconsin business asset" and "qualified gain"?

1 (b) The treatment of section 71.05 (26) (title), (a) 4., (b) (intro.), (bm), (c), (d),
2 and (f) of the statutes first applies to taxable years beginning after December 31,
3 2013.
4

(END)

D-NOTE
-date-

MES:sac:

Emily:

We did not add "calendar" before "year"
in two places in created p. 73.03(69) as
requested by DOR. This is not necessary.
Please see p. 990.01 (49); "year" already
means "calendar year" in this context.

MES

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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FFK:.....

INS 6-21

SECTION 1. 238.145 of the statutes is repealed.

SECTION 2. 238.146 of the statutes is repealed.

SECTION 3. 238.20 of the statutes is repealed.

END INS 6-21

INS 8-3

SECTION 9450. Effective dates; Wisconsin Economic Development Corporation •

(1) ~~TRANSFER CERTIFICATION PROCESSES FOR CERTAIN TAX BENEFITS TO DEPARTMENT~~

~~OF REVENUE~~ The treatment of sections 238.145, 238.146, and 238.20 of the statutes takes effect on January 1, 2014.

END INS 8-3

CAPITAL GAINS DEFERRAL, EXCLUSIONS; CERTIFICATION

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

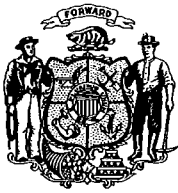
LRB-0790/1dn
MES:sac:rs

January 24, 2013

Emily:

We did not add "calendar" before "year" in two places in created s. 73.03 (69) as requested by DOR. This is not necessary. Please see s. 990.01 (49); "year" already means "calendar year" in this context.

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Managing Attorney
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State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-079011
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DOA:.....Ley, BB0294 – Transfer certification of business for capital gain deferral and exclusion from WEDC to DOR; consolidate the subtractions

FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION

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The capital gains exemption defines "qualifying gain" as the gain realized by the sale of any asset that is purchased after December 31, 2010, held for at least five consecutive years, is a Wisconsin capital asset at the time of purchase and for at least two of the next four years, and treated as a long-term gain under federal law. A "Wisconsin capital asset" is real or tangible personal property that is located in this state and used in a Wisconsin business, or stock or other ownership interest in a Wisconsin business. Currently, a business may apply to WEDC for annual

certification. WEDC may certify a business if it determines that, in the taxable year ending immediately before the date of the business's application, at least 50 percent of the business's payroll is paid in Wisconsin and at least 50 percent of the value of the business's real and tangible personal property is used by the business in this state.

This bill transfers the responsibility for registering a business from WEDC to DOR, subject to the business meeting the same conditions related to payroll and the value of the business's real and tangible personal property as is the case under current law. Also under the bill, excluded gain is not limited to net capital gain, and the bill clarifies that the exclusion is for gain on investments in a business and not for individual assets of the business.

Also under current law, there are two income tax deferrals for capital gains that are reinvested in qualified Wisconsin businesses.

Under one of the deferrals (long-term deferral), a claimant may elect to defer the payment of income taxes on up to \$10,000,000 of the gain realized from the sale of any capital asset held more than one year (original asset) that is treated as a long-term gain under the Internal Revenue Code, if the claimant completes a number of requirements. The requirements include: placing the gain from the original asset in a segregated account in a financial institution; investing all of the proceeds in a qualified new business venture (QNBV), as certified by WEDC, within 180 days after the sale of the original asset that generated the gain; and notifying DOR on a form prepared by DOR that the claimant is deferring the payment of income tax on the gain from the original asset because the proceeds have been reinvested. Under the bill, the long-term deferral may no longer be claimed for taxable years beginning after December 31, 2013.

Under the other deferral (Wisconsin assets deferral), a claimant may elect to defer the payment of income taxes on any amount of the gain realized from the sale of any capital asset held more than one year (original new asset) that is treated as a long-term gain under the Internal Revenue Code, if the claimant completes a number of requirements. The current requirements for the Wisconsin assets deferral are nearly the same as the requirements for the long-term deferral, although the proceeds must be invested in a "qualified Wisconsin business," as certified by WEDC, instead of a QNBV.

Under this bill, for taxable years beginning after December 31, 2013, the current requirement that the gain realized from the sale of the applicable long-term asset must be deposited into a segregated account in a financial institution does not apply. This bill transfers the responsibility for registering a business under the Wisconsin assets deferral from WEDC to DOR.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.05 (24) (b) (intro.) of the statutes is amended to read:

71.05 (24) (b) (intro.) For taxable years beginning after December 31, 2010, and before January 1, 2014, a claimant may subtract from federal adjusted gross income any amount, up to \$10,000,000, of a long-term capital gain if the claimant does all of the following:

SECTION 2. 71.05 (25) (title) of the statutes is amended to read:

71.05 (25) (title) CAPITAL GAINS EXCLUSION; WISCONSIN SOURCE ASSETS QUALIFIED WISCONSIN BUSINESS.

SECTION 3. 71.05 (25) (a) 2. of the statutes is amended to read:

71.05 (25) (a) 2. “Qualifying gain” means the a long-term capital gain under the Internal Revenue Code realized from the sale of any asset which is a Wisconsin capital asset in the year it is purchased by the claimant and for at least 2 of the subsequent 4 years; that is purchased an investment made after December 31, 2010; that is, and held for at least 5 uninterrupted years; and that is treated as a long-term gain under the Internal Revenue Code in a business that for the year of investment and at least 2 of the 4 subsequent years was a qualified Wisconsin business; except that a qualifying gain may not include any amount for which the claimant claimed a subtraction under sub. (24) (b) or any gain described under sub. (26) (b) 1.

SECTION 4. 71.05 (25) (a) 3. of the statutes is renumbered 71.05 (25) (a) 1s. and amended to read:

1 71.05 (25) (a) 1s. "Qualified Wisconsin business" means a business certified by
(2) the Wisconsin Economic Development Corporation under s. 238.145 ^{of 2011 stats.} or registered
3 with the department under s. 73.03 (69).

4 SECTION 5. 71.05 (25) (a) 4. of the statutes is repealed.

5 SECTION 6. 71.05 (25) (b) (intro.) of the statutes is renumbered 71.05 (25) (b)
6 and amended to read:

7 71.05 (25) (b) For taxable years beginning after December 31, 2015, for a
8 Wisconsin capital asset that is purchased an investment in a qualified Wisconsin
9 business made after December 31, 2010, and held for at least 5 uninterrupted years,
10 a claimant may subtract from federal adjusted gross income the lesser of one of the
11 following amounts amount of the claimant's qualifying gain in the year to which the
12 claim relates, to the extent that it is not subtracted under sub. (6) (b) 9. or 9m.:

13 SECTION 7. 71.05 (25) (b) 1. of the statutes is repealed.

14 SECTION 8. 71.05 (25) (b) 2. of the statutes is repealed.

15 SECTION 9. 71.05 (26) (title) of the statutes is amended to read:

16 71.05 (26) (title) INCOME TAX DEFERRAL; ~~LONG-TERM WISCONSIN CAPITAL ASSETS~~
17 QUALIFIED WISCONSIN BUSINESS.

18 SECTION 10. 71.05 (26) (a) 4. of the statutes is amended to read:

19 71.05 (26) (a) 4. "Qualified Wisconsin business" means a business certified by
(20) the Wisconsin Economic Development Corporation under s. 238.146 ^{of 2011 stats.} or registered
21 with the department under s. 73.03 (69).

22 SECTION 11. 71.05 (26) (b) (intro.) of the statutes is amended to read:

23 71.05 (26) (b) (intro.) For taxable years beginning after December 31, 2010, and
24 before January 1, 2014, a claimant may subtract from federal adjusted gross income
25 any amount of a long-term capital gain if the claimant does all of the following:

1 **SECTION 12.** 71.05 (26) (bm) of the statutes is created to read:

2 71.05 **(26)** (bm) For taxable years beginning after December 31, 2013, a
3 claimant may subtract from federal adjusted gross income any amount of a
4 long-term capital gain if the claimant does all of the following:

5 1. Within 180 days after the sale of the asset that generated the gain, invests
6 all of the gain in a qualified Wisconsin business.

7 2. After making the investment as described under subd. 1., notifies the
8 department, on a form prepared by the department, that the claimant will not
9 declare the gain on the claimant's income tax return because the claimant has
10 reinvested the capital gain as described under subd. 1. The form shall be sent to the
11 department along with the claimant's income tax return for the year to which the
12 claim relates.

13 **SECTION 13.** 71.05 (26) (c) of the statutes is amended to read:

14 71.05 **(26)** (c) The basis of the investment described in par. (b) 2. shall be
15 calculated by subtracting the gain described in par. (b) 1. from the amount of the
16 investment described in par. (b) 2. The basis of the investment described in par. (bm)
17 1. shall be calculated by subtracting the gain described in par. (bm) 1. from the
18 amount of the investment described in par. (bm) 1.

19 **SECTION 14.** 71.05 (26) (d) of the statutes is amended to read:

20 71.05 **(26)** (d) If a claimant defers the payment of income taxes on a capital gain
21 under this subsection, the claimant may not use the gain described under par. (b) 1.
22 to net capital gains and losses, as described under sub. (10) (c).

23 **SECTION 15.** 71.05 (26) (f) of the statutes is amended to read:

1 71.05 (26) (f) If a claimant claims the a subtraction for a capital gain under this
2 subsection par. (b) or (bm), the gain ~~described under par. (b) 1.~~ may not be used as
3 a qualifying gain under sub. (25).

4 **SECTION 16.** 73.03 (69) of the statutes is created to read:

5 73.03 (69) (a) To, effective on January 1, 2014, implement a program to register
6 businesses for purposes of s. 71.05 (25) and (26). A business shall register
7 electronically with the department each year for which the business desires
8 registration.

9 (b) A business may register under this subsection if, in the business's taxable
10 year ending immediately before the date of the businesses registration, all of the
11 following apply:

12 1. The business has at least 2 full-time employees and the amount of payroll
13 compensation paid by the business in this state is equal to at least 50 percent of the
14 amount of all payroll compensation paid by the business.

15 2. The value of real and tangible personal property owned or rented and used
16 by the business in this state is equal to at least 50 percent of the value of all real and
17 tangible personal property owned or rented and used by the business.

18 (c) The department may adopt rules for the administration of this subsection.

19 (d) For each year beginning after December 31, 2013, the department shall
20 compile a list of businesses registered under this subsection and shall make the list
21 available to the public at the department's Internet site.

22 **SECTION 17.** 238.145 of the statutes is repealed.

23 **SECTION 18.** 238.146 of the statutes is repealed.

24 **SECTION 19.** 238.20 of the statutes is repealed.

25 **SECTION 9337. Initial applicability; Revenue.**

1 (1) CAPITAL GAINS DEFERRALS, EXCLUSIONS.

2 (a) The treatment of section 71.05 (25) (title), (a) 2., 3., and 4., and (b) (intro.),
3 1., and 2. of the statutes first applies, retroactively, to taxable years beginning after
4 December 31, 2010.

5 (b) The treatment of section 71.05 (26) (title), (a) 4., (b) (intro.), (bm), (c), (d),
6 and (f) of the statutes first applies to taxable years beginning after December 31,
7 2013.

8 **SECTION 9450. Effective dates; Wisconsin Economic Development**
9 **Corporation.**

10 (1) CAPITAL GAINS DEFERRAL, EXCLUSIONS; CERTIFICATION. The treatment of
11 sections 238.145, 238.146, and 238.20 of the statutes takes effect on January 1, 2014.

12 (END)

D-Note

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0790/2

FFK:.....

INS 3-1

✓
SECTION 1. 71.05 (24) (a) 4. of the statutes is amended to read:

71.05 **(24)** (a) 4. "Qualified new business venture" means a business certified
✓
under s. 238.20, 2011 stats., or s. 560.2085, 2009 stats.

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, 183, 255, 289, 321, 326; 2005 a. 22, 25, 216, 254, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 205, 265, 269, 276, 295, 332, 344; 2011 a. 3, 5, 10, 32, 212, 232, 237; 2011 a. 260 ss. 80, 81; s. 13.92 (1) (bm) 2., (2) (i).

END INS 3-1

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0790/2dn

FFK...

Date

To Emily:

This draft contains *3* technical changes to cross-references of the repealed WEDC provisions.

Fern Knepp
Legislative Attorney
Phone: (608) 261-6927
E-mail: fern.knepp@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
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FFK:kjfrs

February 14, 2013

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State of Wisconsin
2013 - 2014 LEGISLATURE



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1 **AN ACT ...; relating to:** the budget.

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TAXATION

INCOME TAXATION

Under current law, capital gains on certain Wisconsin-sourced capital assets are exempted from taxation. For taxable years beginning after December 31, 2015, an individual; an individual partner or member of a partnership, limited liability company, or limited liability partnership; or an individual shareholder of a tax-option corporation (claimant) may subtract from federal adjusted gross income the lesser of the claimant's federal net capital gain as reported on the claimant's federal tax return if, in that year, the claimant had a qualifying gain, or the claimant's qualifying gain.

The capital gains exemption defines "qualifying gain" as the gain realized by the sale of any asset that is purchased after December 31, 2010, held for at least five consecutive years, is a Wisconsin capital asset at the time of purchase and for at least two of the next four years, and treated as a long-term gain under federal law. A "Wisconsin capital asset" is real or tangible personal property that is located in this state and used in a Wisconsin business, or stock or other ownership interest in a Wisconsin business. Currently, a business may apply to WEDC for annual

certification. WEDC may certify a business if it determines that, in the taxable year ending immediately before the date of the business's application, at least 50 percent of the business's payroll is paid in Wisconsin and at least 50 percent of the value of the business's real and tangible personal property is used by the business in this state.

This bill transfers the responsibility for registering a business from WEDC to DOR, subject to the business meeting the same conditions related to payroll and the value of the business's real and tangible personal property as is the case under current law. Also under the bill, excluded gain is not limited to net capital gain, and the bill clarifies that the exclusion is for gain on investments in a business and not for individual assets of the business.

Also under current law, there are two income tax deferrals for capital gains that are reinvested in qualified Wisconsin businesses.

Under one of the deferrals (long-term deferral), a claimant may elect to defer the payment of income taxes on up to \$10,000,000 of the gain realized from the sale of any capital asset held more than one year (original asset) that is treated as a long-term gain under the Internal Revenue Code, if the claimant completes a number of requirements. The requirements include: placing the gain from the original asset in a segregated account in a financial institution; investing all of the proceeds in a qualified new business venture (QNBV), as certified by WEDC, within 180 days after the sale of the original asset that generated the gain; and notifying DOR on a form prepared by DOR that the claimant is deferring the payment of income tax on the gain from the original asset because the proceeds have been reinvested. Under the bill, the long-term deferral may no longer be claimed for taxable years beginning after December 31, 2013.

Under the other deferral (Wisconsin assets deferral), a claimant may elect to defer the payment of income taxes on any amount of the gain realized from the sale of any capital asset held more than one year (original new asset) that is treated as a long-term gain under the Internal Revenue Code, if the claimant completes a number of requirements. The current requirements for the Wisconsin assets deferral are nearly the same as the requirements for the long-term deferral, although the proceeds must be invested in a "qualified Wisconsin business," as certified by WEDC, instead of a QNBV.

Under this bill, for taxable years beginning after December 31, 2013, the current requirement that the gain realized from the sale of the applicable long-term asset must be deposited into a segregated account in a financial institution does not apply. This bill transfers the responsibility for registering a business under the Wisconsin assets deferral from WEDC to DOR.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.05 (24) (a) 4. of the statutes is amended to read:

2 71.05 (24) (a) 4. “Qualified new business venture” means a business certified
3 under s. 238.20, 2011 stats., or s. 560.2085, 2009 stats.

4 **SECTION 2.** 71.05 (24) (b) (intro.) of the statutes is amended to read:

5 71.05 (24) (b) (intro.) For taxable years beginning after December 31, 2010, and
6 before January 1, 2014, a claimant may subtract from federal adjusted gross income
7 any amount, up to \$10,000,000, of a long-term capital gain if the claimant does all
8 of the following:

9 **SECTION 3.** 71.05 (25) (title) of the statutes is amended to read:

10 71.05 (25) (title) CAPITAL GAINS EXCLUSION; ~~WISCONSIN-SOURCE ASSETS~~ QUALIFIED
11 WISCONSIN BUSINESS.

12 **SECTION 4.** 71.05 (25) (a) 2. of the statutes is amended to read:

13 71.05 (25) (a) 2. “Qualifying gain” means the a long-term capital gain under
14 the Internal Revenue Code realized from the sale of ~~any asset which is a Wisconsin~~
15 ~~capital asset in the year it is purchased by the claimant and for at least 2 of the~~
16 ~~subsequent 4 years; that is purchased~~ an investment made after December 31, 2010;
17 ~~that is, and~~ held for at least 5 uninterrupted years; ~~and that is treated as a long-term~~
18 ~~gain under the Internal Revenue Code in a business that for the year of investment~~
19 and at least 2 of the 4 subsequent years was a qualified Wisconsin business; except
20 that a qualifying gain may not include any amount for which the claimant claimed
21 a subtraction under sub. (24) (b) or any gain described under sub. (26) (b) 1.

1 **SECTION 5.** 71.05 (25) (a) 3. of the statutes is renumbered 71.05 (25) (a) 1s. and
2 amended to read:

3 71.05 (25) (a) 1s. “Qualified Wisconsin business” means a business certified by
4 the Wisconsin Economic Development Corporation under s. 238.145, 2011 stats., or
5 registered with the department under s. 73.03 (69).

6 **SECTION 6.** 71.05 (25) (a) 4. of the statutes is repealed.

7 **SECTION 7.** 71.05 (25) (b) (intro.) of the statutes is renumbered 71.05 (25) (b)
8 and amended to read:

9 71.05 (25) (b) For taxable years beginning after December 31, 2015, for a
10 Wisconsin capital asset that is purchased an investment in a qualified Wisconsin
11 business made after December 31, 2010, and held for at least 5 uninterrupted years,
12 a claimant may subtract from federal adjusted gross income the lesser of one of the
13 following amounts amount of the claimant’s qualifying gain in the year to which the
14 claim relates, to the extent that it is not subtracted under sub. (6) (b) 9. or 9m.:

15 **SECTION 8.** 71.05 (25) (b) 1. of the statutes is repealed.

16 **SECTION 9.** 71.05 (25) (b) 2. of the statutes is repealed.

17 **SECTION 10.** 71.05 (26) (title) of the statutes is amended to read:

18 71.05 (26) (title) ~~INCOME TAX DEFERRAL; LONG-TERM WISCONSIN CAPITAL ASSETS~~
19 QUALIFIED WISCONSIN BUSINESS.

20 **SECTION 11.** 71.05 (26) (a) 4. of the statutes is amended to read:

21 71.05 (26) (a) 4. “Qualified Wisconsin business” means a business certified by
22 the Wisconsin Economic Development Corporation under s. 238.146, 2011 stats., or
23 registered with the department under s. 73.03 (69).

24 **SECTION 12.** 71.05 (26) (b) (intro.) of the statutes is amended to read:

1 71.05 (26) (b) (intro.) For taxable years beginning after December 31, 2010, and
2 before January 1, 2014, a claimant may subtract from federal adjusted gross income
3 any amount of a long-term capital gain if the claimant does all of the following:

4 **SECTION 13.** 71.05 (26) (bm) of the statutes is created to read:

5 71.05 (26) (bm) For taxable years beginning after December 31, 2013, a
6 claimant may subtract from federal adjusted gross income any amount of a
7 long-term capital gain if the claimant does all of the following:

8 1. Within 180 days after the sale of the asset that generated the gain, invests
9 all of the gain in a qualified Wisconsin business.

10 2. After making the investment as described under subd. 1., notifies the
11 department, on a form prepared by the department, that the claimant will not
12 declare the gain on the claimant's income tax return because the claimant has
13 reinvested the capital gain as described under subd. 1. The form shall be sent to the
14 department along with the claimant's income tax return for the year to which the
15 claim relates.

16 **SECTION 14.** 71.05 (26) (c) of the statutes is amended to read:

17 71.05 (26) (c) The basis of the investment described in par. (b) 2. shall be
18 calculated by subtracting the gain described in par. (b) 1. from the amount of the
19 investment described in par. (b) 2. The basis of the investment described in par. (bm)
20 1. shall be calculated by subtracting the gain described in par. (bm) 1. from the
21 amount of the investment described in par. (bm) 1.

22 **SECTION 15.** 71.05 (26) (d) of the statutes is amended to read:

23 71.05 (26) (d) If a claimant defers the payment of income taxes on a capital gain
24 under this subsection, the claimant may not use the gain ~~described under par. (b) 1.~~
25 to net capital gains and losses, as described under sub. (10) (c).

1 **SECTION 16.** 71.05 (26) (f) of the statutes is amended to read:

2 71.05 (26) (f) If a claimant claims ~~the~~ a subtraction for a capital gain under this
3 subsection par. (b) or (bm), the gain described under ~~par. (b) 1.~~ may not be used as
4 a qualifying gain under sub. (25).

5 **SECTION 17.** 73.03 (69) of the statutes is created to read:

6 73.03 (69) (a) To, effective on January 1, 2014, implement a program to register
7 businesses for purposes of s. 71.05 (25) and (26). A business shall register
8 electronically with the department each year for which the business desires
9 registration.

10 (b) A business may register under this subsection if, in the business's taxable
11 year ending immediately before the date of the businesses registration, all of the
12 following apply:

13 1. The business has at least 2 full-time employees and the amount of payroll
14 compensation paid by the business in this state is equal to at least 50 percent of the
15 amount of all payroll compensation paid by the business.

16 2. The value of real and tangible personal property owned or rented and used
17 by the business in this state is equal to at least 50 percent of the value of all real and
18 tangible personal property owned or rented and used by the business.

19 (c) The department may adopt rules for the administration of this subsection.

20 (d) For each year beginning after December 31, 2013, the department shall
21 compile a list of businesses registered under this subsection and shall make the list
22 available to the public at the department's Internet site.

23 **SECTION 18.** 238.145 of the statutes is repealed.

24 **SECTION 19.** 238.146 of the statutes is repealed.

25 **SECTION 20.** 238.20 of the statutes is repealed.

SECTION 9337. Initial applicability; Revenue.

(1) CAPITAL GAINS DEFERRALS, EXCLUSIONS.

(a) The treatment of section 71.05 (25) (title), (a) 2., 3., and 4., and (b) (intro.), 1., and 2. of the statutes first applies, retroactively, to taxable years beginning after December 31, 2010.

(b) The treatment of section 71.05 (26) (title), (a) 4., (b) (intro.), (bm), (c), (d), and (f) of the statutes first applies to taxable years beginning after December 31, 2013.

SECTION 9450. Effective dates; Wisconsin Economic Development Corporation.

(1) CAPITAL GAINS DEFERRAL, EXCLUSIONS; CERTIFICATION. The treatment of sections 238.145, 238.146, and 238.20 of the statutes takes effect on January 1, 2014.

(END)